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Governor

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Executive Director,
NATURAL RESOURCES

CLEON B. FEIGHT
Director

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS, AND MINING
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April 5, 1979

ACT/015/046

J. Paul Mathias
8871 East Easter Place
Englewood, Colorado 80112

Dear Mr. Mathias:

Mr. Feight has brought to my attention your recent correspondence and the need for further clarification of the possible remedies which you may pursue. From the nature of your letters of March 25, 1979, March 6, 1979, and February 12, 1979, the remedy which you appear to be seeking is a surface use and damage agreement with Colt Mesa/Chinook Construction or compensation for the company's failure to negotiate such an agreement. Such negotiations between two parties are private in nature and redress for damages arising from such an agreement or the lack thereof are within the jurisdiction of a civil court and are not the nature of proceedings which arise before the Board of Oil, Gas, and Mining. The Board's authority under the Mined Land Reclamation Act does not include a provision by which the Board could award compensation for private property damages.

The Board of Oil, Gas, and Mining will, upon your request, hear the matter of Colt Mesa/Chinook Construction Company's failure to inform the Division of your surface interest in the East half of Section 5, Township 22 South, Range 14 East, Emery County, Utah. The company had the statutory responsibility of informing the Division of such interests as required by Section 40-8-7(1)(a), Utah Code Annotated, 1953, as amended. Due to the volume of applications and the burden which research of record owners requires, the Division relies upon information provided by the mining operator when notifying owners of record of the land affected by the Division's approval of a mining operation as required by Rule M-4. Because Colt Mesa/Chinook has not informed the Division of your surface interest, the company is in

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violation of the Act and pursuant to Section 40-8-9(4), U.C.A., 1953, as amended, the Board will call a hearing at your request to review the facts in the matter. However, because mining has ceased at the site and only a \$1,000.00 performance bond remains on the operation, the Board will have little leverage by which to remedy the violation. At most, the Board can require the forfeiture of the \$1,000.00 bond by the company. However, even this money could not be used to compensate the surface owner but must instead be applied to reclamation of the mined area.

If the Board's hearing reveals that Colt Mesa/Chinook Construction willfully omitted your recorded surface interest from its submissions to the Division, then the Board may refer the matter for criminal prosecution under Section 40-8-9, U.C.A., 1953. The County Attorney of Emery County would handle such proceedings in a court of competent jurisdiction. Once again, criminal proceedings, while they may result in the fine of Colt Mesa/Chinook Construction, would not provide you with monetary compensation for your property damages.

Please contact me if I can be of further assistance in pursuing your remedies before the Board of Oil, Gas, and Mining.

Sincerely,

Denise A. Dragoo

DENISE A. DRAGOO
SPECIAL ASSISTANT ATTORNEY GENERAL for
NATURAL RESOURCE AGENCIES

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